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| 27128 | 7590 | 09/12/2005 | EXAMINER | |
| BLACKWELL SANDERS PEPER MARTIN LLP | | | AGRAWAL, CHRISTOPHER K | |
| 720 OLIVE STREET | | | ART UNIT | |
| SUITE 2400 | | | PAPER NUMBER | |
| ST. LOUIS, MO 63101 | | | 3726 | |

DATE MAILED: 09/12/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/604,802

Applicant(s)

FLUM, PAUL L.

Examiner

Christopher K. Agrawal

Art Unit

3726

— The MAILING DATE of this communication appears on the cover sheet with the correspondence address —

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-12 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-12 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. ____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date 8/18/03.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: ____.

DETAILED ACTION

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. **Claims 1- 7 are rejected under 35 U.S.C. 102(b) as being anticipated by Stoddard et. al. (U.S. Patent No. 4,946,032).**

3. Claim 1: Stoddard teaches a method of transforming the appearance of an existing product display unit (**Col. 2 lines 15-17**), said display unit having at least one side portion **21** associated therewith, the method comprising the steps of: (a) selecting a shape other than the shape of at least one side portion of the product display unit itself into which the appearance of the product display unit will be transformed; (b) forming a panel member **11** separate and apart from the product display unit itself which incorporates the shape selected in step (a) above (**note the arcuate shape of panel member 11 in Fig. 1**) ; and (c) attaching said panel member to at least one side portion of the product display unit (**Col. 2 lines 18-30**) so as to transform the appearance of at least one side portion of the product display unit into the shape selected in step (a) above.

4. Regarding selection of a new appearance and forming of a panel member, it is inherent that these steps would be necessary for the panel to be attached to the product

display unit. For a panel to be used in any manner, a panel must have been previously designed and formed.

5. Claim 2: Stoddard also teaches the method of claim 1 as described above wherein said panel member includes a top flange portion **11a**, said top flange portion being engageable with the existing product display unit.

6. Claim 3: Stoddard also teaches the method of claim 1 as described above wherein said panel member includes a bottom flange portion (**see Fig. 4**), said bottom flange portion being engageable with the existing product display unit.

7. Claim 4: Stoddard also teaches the method of claim 1 as described above wherein said panel member includes at least one side wing panel portion **17**, said side wing panel portion extending partially around and mating with portions of the existing product display unit.

8. Claim 5: Stoddard teaches a method of changing the appearance of a product display unit (**Col. 2 lines 15-17**), said product display unit having a specific appearance and having at least one side portion associated therewith **21** and the method comprising the steps of: (a) selecting a new appearance for at least one side portion of the product display unit wherein said selected appearance is different from the specific appearance of at least one side portion of the product display unit; (b) forming a panel member **11** representative of the new appearance selected in step (a) above when said panel member is assembled onto the product display unit (**note the arcuate shape of panel member 11 in Fig. 1**); (c) attaching said panel member to at least one side portion of

the product display unit (**Col. 2 lines 18-30**) thereby changing the appearance of the product display unit to the new appearance selected in step (a) above.

9. Regarding selection of a new appearance and forming of a panel member, it is inherent that these steps would be necessary for the panel to be attached to the product display unit. For a panel to be used in any manner, a panel must have been previously designed and formed.

10. Claim 6: Stoddard also teaches the method of claim 5 as described above wherein said panel member includes top and bottom flange portions **11a and Fig. 4**, said top and bottom flange portions being respectively engageable with the product display unit.

11. Claim 7: Stoddard also teaches the method of claim 5 as described above wherein said panel member includes extending side portions **17** on each opposed side portion thereof, said extending side portions mating with other portions of the product display unit when said panel member is attached thereto (**Col. 2 lines 18-38**).

12. **Claims 8 and 10-12 are rejected under 35 U.S.C. 102(b) as being anticipated by Miller et. al. (U.S. Patent No. 5,448,844).**

13. Claim 8: Miller et. al. teaches a method of changing the appearance of a product display unit (**Col. 1 lines 16-52**) wherein the product display unit includes a body container **44**, a chilling tub **18** having a projecting down-turned rim portion **46** forming upper channel means **24** around the periphery of the product display unit (**Figs. 1 and 3**), the projecting down-turned rim portion engaging the upper portion of the body container **Fig. 7**, and a floor member having lower channel means **26** associated

therewith for receiving the lower portion of the body container (**Fig. 3**), the method comprising the steps of: (a) selecting a panel member having an appearance associated therewith (**Figs. 6 and 7**) different from the specific appearance associated with at least a portion of the body container (**Col. 1 lines 16-52**), said panel member having a top flange portion **36** and a bottom flange portion **38** associated therewith; (b) attaching said panel member to the product display unit wherein the top flange portion of said panel member is receivable within the upper channel means associated with the product display unit and the bottom flange portion of said panel member is receivable within the bottom channel means of the product display unit (**Col.8 lines 3-48**), attachment of said panel member to the product display unit changing the appearance of at least a portion of the product display unit.

14. Claim 10: Miller et. al. also teaches the method of claim 8 as described above wherein the product display unit further includes a lid member engageable with the chilling tub for controlling access thereto (**see Fig. 8**).

15. Claim 11: Miller teaches a product display unit adaptable for holding products said product display unit **53** having a plurality of sides associated therewith the improvement comprising: (a) a panel member shaped and configured so as to present an appearance different from the appearance associated with at least one side portion of the product display unit; and (b) means **60, 62, 64** for attaching said panel member to at least one side portion of the product display unit whereby attachment of said panel member to the display unit transforms the overall appearance of the display unit (**Col. 1**

lines 16-52). It is noted that applicant has invoked 112 6th paragraph with the language, "means for attaching" in paragraph (b) of the claim.

16. **Claim 12:** Miller also teaches the method of claim 11 wherein said means for attaching said panel member to at least one side portion of the product display unit includes top and bottom channel means **54, 56, 58** associated with the product display unit and top and bottom flange portions **36** associated with said panel member, said top and bottom flange portions being cooperatively engageable with the top and bottom channel means associated with the product display unit (**Col. 11 lines 5-13**).

Claim Rejections - 35 USC § 103

17. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

18. **Claim 9 is rejected under 35 U.S.C. 103(a) as being obvious over Miller et. al. in view of Stoddard.**

19. **Claim 9:** Miller teaches the method of claim 8 as described above but fails to teach the panel member including at least one side wing panel portion, said at least one side wing panel portion extending partially around portions of the product display unit when said panel member is attached thereto.

20. Stoddard teaches a panel member for a display unit having at least one side wing panel portion **17**, said at least one side wing panel portion extending partially

around portions of the product display unit when said panel member is attached thereto
(Col. 2 lines 18-38).

21. It would have been obvious to one of ordinary skill in the art at the time of the invention to have incorporated the use of side wing panel portions in the panel member of Miller et. al. to facilitate fixture of the panel to the sides of the container. Wing portions on the perimeter of the panel provide convenient means for interface with the display unit, while permitting the entire side portion of the display unit to be covered by the panel member.

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

U.S. Patent No. 6,415,623 teaches a point of sale product chiller having modular, aesthetic panels.

22. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Christopher K. Agrawal whose telephone number is (571) 272-3578. The examiner can normally be reached on Mon-Fri 8AM-4:30PM.

23. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, David Bryant can be reached on (571) 272-4526. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

24. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

CKA

A handwritten signature in black ink, appearing to read 'David P. Bryant', with a stylized, cursive script.

David P. Bryant
Primary Examiner

Christopher Agrawal
Patent Examiner
Art Unit 3726